



May 26, 2020

VIA ECF

Hon. Lewis J. Liman
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Mario Hernandez v. BMNY Contracting Corp., et al.*
Docket No.: 17-CV-9375 (LJL)

Dear Judge Liman:

This firm represents the named Plaintiffs and all opt-in Plaintiffs (collectively as “Plaintiffs”), which brought the above referenced matter against Defendant BMNY Construction Corp., their former employer, for various violations of the Fair Labor Standards Act and New York Labor Law, as well as wage claims under New York common law.¹ D.E. 61. The Court referred this matter to the SDNY mediation panel and directed the parties to conduct mediation by May 29, 2020 and scheduled a status conference on June 2, 2020 at 10:00 a.m. Plaintiffs now request an extension of time to conduct mediation and an adjournment of the impending conference.

The SDNY mediation panel assigned mediator Neil Eiseman to this matter and scheduled mediation for May 26, 2020. Unfortunately, due to circumstances beyond the parties’ control, that mediation could not occur on May 26, 2020. Specifically, Mr. Eiseman inadvertently believed that he had been removed as the mediator for this matter due to communications with the mediation panel, which resulted in a delay of the mediation process. However, since resolving this miscommunication, Mr. Eiseman has conducted a pre-mediation conference with the parties. Moreover, he has directed the parties to exchange certain documents and information to prepare the matter for mediation by June 15, 2020 and to exchange mediation statements by June 30, 2020. Based on scheduling constraints, the parties are working to schedule the mediation during the last two weeks of July 2020.

This matter involves nineteen Plaintiffs and opt-in Plaintiffs. The parties anticipate that completing discovery will require devoting significant resources by all parties to produce the remaining document discovery and conduct depositions of the Plaintiffs, Defendant BMNY Construction Corp. and relevant third-party witnesses. This discovery will require an exceptional expenditure of attorneys’ fees and litigation expenses. As such, the parties believe that conducting mediation prior to embarking on that course of discovery is necessary

¹ Defendants BMNY Contracting Corp., Eastland Services Corp., and Benedetto Cupo are not currently participating in this action and will be subject to a motion for default following mediation.

to conserve the parties' resources to put those sums toward a potential settlement and to increase the parties' probability of success at mediation. As a result, the parties believe an adjournment of the June 2, 2020 status conference is appropriate.

Accordingly, Plaintiffs, on behalf of and with the consent of Defendant BMNY Construction Corp., request: (1) an extension of time to complete mediation from May 29, 2020 to July 31, 2020, (2) an adjournment of the June 2, 2020 status conference to a date convenient to the Court; and (3) an extension of time to submit a proposed Case Management Plan and Scheduling Order until one week prior to the status conference. Having conferred, the parties are available for a rescheduled status conference on August 3, 4, 5, 6, 7, 10, 11, 13 and 14, 2020.

The parties made a prior request to adjourn this status conference due to a scheduling conflict (and requested referral of this matter to the SDNY mediation panel to permit the parties to engage in mediation) and made a second request to adjourn this conference due to complications caused by the Covid-19 pandemic, both of which were granted. The parties made one prior request of the deadline to conduct mediation due to complications caused by the Covid-19 pandemic, which was granted.

We thank the Court for its kind consideration of these requests.


Respectfully submitted,

/S/ David D. Barnhorn
DAVID D. BARNHORN, ESQ.

C: All Counsel of Record via ECF

GRANTED. The status conference previously scheduled for June 2, 2020 is ADJOURNED to August 4, 2020 at 3:45 p.m. The parties shall submit the proposed Case Management Plan and Scheduling Order one week prior to the conference.

SO ORDERED. 5/27/2020.


LEWIS J. LIMAN
United States District Judge